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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,814	01/15/2004	Mark A. Hackler	IM1315USNA	8254

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LEGAL PATENT RECORDS CENTER
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EXAMINER	
SELLS, JAMES D	
ART UNIT	PAPER NUMBER
1791	

NOTIFICATION DATE	DELIVERY MODE
02/28/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-Legal.PRC@usa.dupont.com

Office Action Summary	Application No.	Applicant(s)	
	10/759,814	HACKLER ET AL.	
	Examiner	Art Unit	
	James Sells	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *31-43 and 45-77* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *77* is/are allowed.

6)☒ Claim(s) *31-43,45-48,52-66 and 74-76* is/are rejected.

7)☒ Claim(s) *49-51 and 67-73* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 31-43, and 52-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (WO 01/18604).

Johnson discloses a method and apparatus for thermal processing a photosensitive element. As shown in Fig. 15, the system comprises photosensitive sheet 16, which is fed onto drum 18. Heater 300 heats the sheet in the manner claimed by the applicant. Plate processor 10a includes a delivery means for feeding continuous absorbent web 76 of non-woven material, which contacts the hot roller. Blower 356 and shroud 358 extend around drum in close proximity to surface 22. Vacuum fan unit 368 forms a plenum with underpart of conveyor 144a to control fumes from heating the composition later on sheet 16. The exhaust from unit 368 is vented through conduit 370. See page 28, line 13 through page 35, line 3.

However, Johnson does not disclose the means for collecting the vapor at the means for supplying as claimed by the applicant. However, it is the examiner's position that such a configuration is a merely mechanical modification and is therefore an obvious expedient over the configuration disclosed by Johnson. The court has held that a mere change in the arrangement or location of mechanical elements represents an

obvious expedient and that mechanical equivalents would be merely a matter of choice for one having ordinary skill in the art. *See In re Gazda*, 104 USPQ 400 (CCPA 1955).

The applicant is also reminded that the materials used are not germane to the patentability of an apparatus claim.

3. Claims 45-48 and 74-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (WO 01/18604) in view of applicant's admitted prior art.

On page 3, lines 11-22 of specification, applicant discloses a commercial embodiment which employs a collection pan to collect condensate. Such a collection pan constitutes a means for confining the condensate, means for managing removal of the condensate and means for collecting the condensate in the manner claimed by the applicant.

It would have been obvious to one having ordinary skill in the art to employ such a collection pan in the device of Johnson as described above in order to prevent such condensate from damaging the system.

Allowable Subject Matter

4. Claims 49-51 and 67-73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. Claim 77 is allowed.

6. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 77, in an apparatus for forming a relief pattern from a photosensitive element containing a composition layer having an exterior surface and capable of being partially liquefied, comprising: means for heating the exterior surface of the composition layer to a temperature sufficient to cause a portion of the layer to liquefy and cause one or more components in the layer to form a vapor; means for collecting the vapor at or adjacent the heating means; the prior art does not teach or make obvious the concept of means for maintaining the collected vapor in its vaporized state; and means for managing removal of the collected vapor through a filter in the manner claimed by the applicant.

Response to Arguments

7. Applicant's arguments filed 11-26-2007 have been fully considered but they are not persuasive.

Applicant argues Johnson does not contemplate any problems with vapor forming condensate throughout the apparatus and does not suggest structural elements to handle the condensate formed from the vapor. Claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Since Johnson's apparatus appears to have the same structure as applicant's claimed

invention, it is the examiner's position that the disclosure of Johnson makes obvious applicant's claims under 35 USC 103. Therefore applicant's argument is believed to be incorrect in this instance.

In response to applicant's argument that Johnson does not contemplate any problems with vapor forming condensate throughout the apparatus and does not suggest structural elements to handle the condensate formed from the vapor, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant argues there is no motivation to one of ordinary skill in the art to make a change in the arrangement or location of mechanical elements. The examiner does not agree. As stated above, the court has held that a mere change in the arrangement or location of mechanical elements represents an obvious expedient and that mechanical equivalents would be merely a matter of choice for one having ordinary skill in the art. *See In re Gazda*, 104 USPQ 400 (CCPA 1955). Therefore applicant's argument is believed to be incorrect in this instance.

Regarding claims 75-76, applicant argues Johnson fails to teach or even suggest that vapor is most likely to form when the composition layer is reaching or reaches the temperature to liquefy. However, the examiner does not understand how this changes the structure of applicant's means for heating so that it is structurally different from the heating means disclosed by Johnson.

Regarding claim 76, applicant argues Johnson does not disclose means for confining the collected vapor and/or condensate. However, of applicant's admitted prior art. On page 3, lines 11-22 of specification, applicant discloses a commercial embodiment which employs a collection pan to collect condensate. Such a collection pan constitutes a means for confining the condensate, means for managing removal of the condensate and means for collecting the condensate in the manner claimed by the applicant. It would have been obvious to one having ordinary skill in the art to employ such a collection pan in the device of Johnson as described above in order to prevent such condensate from damaging the system. Therefore applicant's argument is believed to be incorrect in this instance.

Telephone/Fax

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sells whose telephone number is (571) 272-1237. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Phil Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

/James Sells/
Primary Examiner, Art Unit 1791